IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRL.A.No. 587 of 2000()

CC.689/1996 of JUDL.MAGISTRATE OF FIRST CLASS-II, MUVATTUPUZHA

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APPELLANT: COMPLAINANT

JOY, S/O.VARKEY
PAREKKATTIL VEEDU
MULAKKULAM VADAKKEKARA
PIRAVOM VILLAGE.

BY ADV. SRI.M.M.MONAYE

RESPONDENTS: ACCUSED IN C.C.689/96

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1. RAJU, S/O.THANKAPPAN
   KIZHAKKAKUTTALAKKOT
   MULAKKULAM VADAKKEKARA,
   PIRAVOM VILLAGE.

2. PRADEEP, S/O.NARAYANAN
   KUTTALAKKOT, MULAKKULAM
   VADAKKEKARA
   PIRAVOM VILLAGE.

3. PRAMOD, S/O.NARAYANAN
   KUTTALAKKOT, MULAKKULAM VADAKKEKARA
   PIRAVOM VILLAGE.

4. PRAKASH, S/O.VELAYUDHAN
   MURUDAMKATTAYIL
   MULAKKULAM VADAKKEKARA
   PIRAVOM VILLAGE.

5. KUNJAPPAN, S/O.KUNJUKUNJU
   CHAKKIRIKKATTIL
   MULAKKULAM VADAKKEKARA
   PIRAVOM VILLAGE.

6. JOHNY, KAROTTUPUTHENPURAYIL
   MULAKKULAM VADAKKEKARA
   PIRAVOM VILLAGE.

7. MATHAI, CHERUMKAL VEEDU
   MULAKKULAM VADAKKEKARA
   PIRAVOM VILLAGE.

8. THANKAPPAN
   EDUKKUDIYIL, OORAMANA KARA
   MEMMURY VILLAGE.

9. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.587 of 2000

Dated this the 27th day of September, 2007

JUDGMENT

The appellant who is the complainant in C.C.No.689/96 in the file of Judicial First Class Magistrate Court-II, Muvattupuzha had filed a private complaint against the respondents alleging offences under Sections 143, 147, 148, 448, 427 and 506(ii) IPC read with Section 149 IPC.

2. It is stated that he had filed a police complaint earlier and the police had deleted A2 and A3 of the instant case from the array of accused. It is seen that the police charge sheeted case was tried separately. The accused in the instant case with respect to the same incident were also tried and acquitted which is challenged herein. At the outset it has to be noted that the procedure adopted by the Magistrate in trying both the cases separately is not correct.

3. The allegation in the instant case is that the accused formed themselves into an unlawful assembly armed

with lethal weapons and trespassed into the property of the complainant situated at Mulakkulam Vadakkakkara and demolished the southern boundary kayyala to a length of 150 feet and cut open a road by widening a thonduvazhy having a width of 3.25 feet which existed there causing a loss of Rs.10,000/- to him and threatened to kill him and his wife with a chopper on 13.10.1995 at 11 O' clock in the night.

4. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 4, Exts. P1 to P4 and Exts. D1 and D2.

5. The trial court found that the evidence of PWs' 1 to 4 contained a number of discrepancies and also that the immediate neighbours were not examined and that the accused/A8 had a bonafide claim of right in view of the fact that in the civil suit instituted by both sides, the civil suit instituted by A8 was decreed and the civil suit instituted by the complainant was dismissed. The counsel for the complainant/ appellant has produced the common judgment in A.S.No.444 and 445/05 which is over the common judgment referred to above and it can be seen that the District court reversed the

findings of the Munsiff and allowed the O.S. filed by the complainant and dismissed the O.S. filed by the accused.

6. It is seen from the order in the A.S. that the accused No.8 has been restrained from trespassing into the property of the plaintiff/complainant and causing obstruction to the complainant by constructing a kayyala in the northern and eastern sides of the property leaving a thonduvazhy at a width of 3.25 feet. I find that the fact that the civil proceedings has been ended at the appellate stage in favour of the complainant is not a reason to set aside the finding in the criminal case. Evidently, at the time A8 was having a bonafide claim in view of the fact that the Munsiff had decreed the suit filed by him and dismissed the suit filed by the complainant. Moreover, in paragraph 12 of the judgment the court below has pointed out a number of inconsistencies and discrepancies in the evidence of PWs' 1 to 4. The appellate jurisdiction against acquittal is much restricted and the same is not meant to be invoked against the possible conclusion in the light of the evidence in favour of the accused. The plea of innocence is fortified by the judgment of acquittal.

In the circumstances, I find no reason to interfere in the findings of the court below and hence the appeal filed is dismissed.

K.R.UDAYABHANU,
JUDGE

csl